

RALPH O. LORENZ

IBLA 76-57

Decided February 4, 1976

Appeal from a decision of the District Manager, Casper District Office, Bureau of Land Management, rejecting appellant's application for renewal of a grazing lease and issuing the lease to a conflicting applicant.

Set aside and remanded.

1. Grazing Leases: Applications -- Grazing Leases: Preference
Right Applicants

In order to qualify as a preference right applicant for a grazing lease on public land under Section 15 of the Taylor Grazing Act, the applicant must own or lawfully occupy contiguous private land the proper use of which requires issuance of a grazing lease. Use or occupancy of contiguous public land under a Section 15 grazing lease does not, by itself, qualify to establish a preference right over contiguous owners or lawful occupants of private lands. The fact an applicant once owned contiguous land and had a lease for the land is irrelevant in determining his present preference status.

APPEARANCES: Ralph O. Lorenz, pro se.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

Ralph O. Lorenz is appealing a May 16, 1975, decision of the District Manager, Casper District Office, Bureau of Land Management (BLM), rejecting his application for renewal of a grazing lease (490674-26) which expired on December 31, 1974. The lease was awarded by the same decision to a conflicting applicant, Jack Sedman.

The national resource land which is the subject of the conflicting applications is within the Table Mountain Wildlife Management

Unit managed by the Wyoming Game and Fish Commission under a cooperative agreement with the BLM. The agreement provides that wildlife and recreation are the predominant uses for the land, but recognizes that other uses including grazing shall be permitted as long as such activities do not interfere with the primary uses.

The tract which is the subject of the two conflicting lease applications is described as the NE 1/4 of Sec. 25, T. 22 N., R. 61 W., Sixth Principal Meridian and contains about 160 acres. This parcel had been leased for grazing by the appellant and his predecessors in interest 1/ since 1963. Prior to 1963, the land had been leased by the conflicting applicant, Sedman.

The tract is part of a much larger area of public land in the Wildlife Management Unit, being partially surrounded on the north, west, and south by public land which is currently under a grazing lease (490673-1) issued to Jack and Gertrude Sedman pursuant to Section 15 of the Taylor Grazing Act, 43 U.S.C. § 315m (1970). On the east and south, the parcel adjoins private land owned by Ralph O. Lorenz.

The decision below has treated both of the applicants as preference right applicants within the same plane of preference. As the basis for its decision, BLM considered the criteria for allocating grazing lease land between conflicting applicants outlined at 43 CFR 4121.2-1(d)(2). BLM rejected appellant's renewal application and awarded a lease to Sedman. In rejecting appellant's application, the decision stated that the land has not been used by the appellant or his predecessor for the past 2 years, and that proper range management would be promoted through implementation of a rest-rotation grazing system which would be feasible if the tract were added to the Sedman grazing lands. 2/

1/ Appellant took title to the privately owned base lands, upon which he bases his preference right, by means of a contract of sale from Everett T. Briggs dated January 25, 1973. An application for assignment of Briggs' grazing lease was filed and subsequently a lease which expired December 31, 1974, was issued to the appellant.

2/ The BLM decision also refers to the authority to cancel a grazing lease found at 43 CFR 4125.1-1(i)(5) in support of its decision. We find this reference inappropriate. Although the authority of the BLM to cancel a grazing lease on proper grounds cannot be disputed, the lease in this case had already expired (on December 31, 1974) at the time the decision below was rendered. At any rate, certain procedures are required in cancellation cases under 43 CFR 4125.1-1(h), including a show cause notice setting forth the nature of the proposed action, the reasons therefore, and the pertinent provisions of the regulations involved. This procedure was not followed in this case.

Although the decision of the BLM considered criteria which are appropriate assuming that both conflicting applicants are in the same plane of preference, Elmer M. Johnson, 20 IBLA 111 (1975); Edward Grady, 18 IBLA 104 (1974), the choice between conflicting applications must first take into account the planes of preference set out at 43 CFR 4121.2-1(c)(1). Robert D. Liudahl, 17 IBLA 135, 136-137 (1974).

It is provided by Section 15 of the Taylor Grazing Act:

[t]hat preference shall be given to owners, homesteaders, lessees, or other lawful occupants of contiguous lands to the extent necessary to permit proper use of such contiguous lands * * *.

43 U.S.C. § 315m (1970).

This provision has been implemented in the regulations which provide that first priority for purposes of a grazing lease shall be granted:

[t]o applicants who are the owners, lessees, or other lawful occupants of contiguous private lands to the extent necessary to permit proper use of such contiguous lands.

43 CFR 4121.2-1(c)(1). (Emphasis added.)

[1] This Department has held that the leasing of contiguous public land under Section 15 of the Taylor Grazing Act, *supra*, as opposed to ownership or control of contiguous private land, does not suffice to establish a preference right to a similar grazing lease on adjoining public land. Robert D. Liudahl, *supra* at 136-137; Claude G. Burson, 59 I.D. 539, 544 (1947). A preference right to a grazing lease requires ownership or control of base lands which are in a nonpublic land status, contiguous to the lands sought to be leased for grazing, and dependent upon the lands sought to be leased for proper use of the base lands. Robert D. Liudahl, *supra*; Claude G. Burson, *supra*.

We note, however, the record now shows that the only contiguous land controlled by Jack and Gertrude Sedman is the public land adjoining the applied-for tract upon which the Sedmans hold a grazing lease under Section 15 of the Taylor Grazing Act, *supra*. The private land to which the Sedmans hold title is not contiguous to the tract which is the subject of these conflicting lease applications, but the private land of the appellant is contiguous to such land. Nevertheless, the decision below stated Mr. Sedman is a preference right applicant even though he does not now own contiguous land, because he once established a preference right and

formerly held a lease for the applied-for land. That conclusion is erroneous. Loss of contiguous lands causes a loss of the preference right; the fact an applicant once owned contiguous lands is irrelevant in determining his present preference status. Ruth E. Han, 13 IBLA 296, 80 I.D. 698 (1973); Harry Grabbert, 11 IBLA 313 (1973). As the decision was predicated upon an erroneous conclusion, it must be set aside and further consideration given to appellant's application.

Appellant may be entitled to a preference right grazing lease to the extent that a lease of the tract applied for is required to permit proper use of the contiguous private lands. Taylor Grazing Act, Section 15, supra; Robert D. Liudahl, supra at 137. The rights of a contiguous preference right applicant must be determined before any consideration is given to noncontiguous applicants. Robert D. Liudahl, supra. The case will be remanded to BLM for reconsideration and appropriate action consistent with this decision. 3/

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is set aside and the case remanded for further action consistent with this decision.

Joan B. Thompson
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Joseph W. Goss
Administrative Judge

3/ The BLM decision should have expressly stated that Sedman was an adverse party who must be served with any appeal documents. It failed to do so, and Sedman has not participated in this appeal. Any future BLM decision should expressly name the appropriate adverse parties.

